

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

WILLIE E. TOWNSEND,

Plaintiff,

v.

C. MUNDEN, et al.,

Defendants.

No. C10-5391BHS

ORDER ADOPTING REPORT  
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation of the Honorable J. Richard Creatura, United States Magistrate Judge (Dkt. 25), Plaintiff Willie E. Townsend's ("Townsend") objections to the Report and Recommendation (Dkts. 26, 27 & 29) and Defendants' responses to Townsend's objections (Dkts. 28 & 30). The Court has considered the Report and Recommendation, Townsend's objections, Defendants' responses, and the remaining record, and hereby adopts the Report and Recommendation for the reasons stated herein.

**I. PROCEDURAL BACKGROUND**

On June 23, 2010, Townsend filed a complaint against Defendants under 42 U.S.C. § 1983. Dkt. 5. On October 28, 2010, Defendants filed a motion to dismiss for failure to state a claim upon which relief could be granted. Dkt. 13. On November 17, 2010, Townsend filed a motion for partial summary judgment (Dkt. 19), a motion to amend his

1 complaint (Dkt. 20), and a response to Defendants' motion to dismiss (Dkt. 21). On  
2 November 19, 2010, Defendants replied to Townsend's response to their motion to dismiss.  
3 Dkt. 22. On December 3, 2010, Defendants filed responses to Townsend's motions to  
4 amend (Dkt. 23) and for partial summary judgment (Dkt. 24). On December 9, 2010, the  
5 magistrate judge issued a Report and Recommendation denying Townsend's motions to  
6 amend and for partial summary judgment and granting Defendants' motion to dismiss. Dkt.  
7 25. On December 14, 2010, the Court received Townsend's replies to Defendants'  
8 responses to his motions to amend and for partial summary judgment (Dkts. 26 & 27) which  
9 the Court designated as objections to the Report and Recommendation. On December 20,  
10 2010, Defendants filed a response to Townsend's replies (designated as objections). Dkt.  
11 28. On December 29, 2010, Townsend filed objections to the Report and Recommendation.  
12 Dkt. 29. On January 4, 2011, Defendants filed a response to Townsend's objections. Dkt.  
13 30. Also on January 4, 2011, Townsend filed a document objecting to the designation of his  
14 reply briefs as objections to the Report and Recommendation. Dkt. 31.

## 15 II. FACTUAL ALLEGATIONS

16 For purposes of this order, the Court is assuming to be true the facts as alleged by  
17 Townsend in his complaint (Dkt. 5) and his proposed amended complaint (Dkt. 20).

18 In his amended complaint, Townsend alleges that he is an inmate from the state of  
19 Virginia who was transferred to a Washington Department of Corrections ("DOC") facility  
20 in which he is incarcerated under the Interstate Correctional Compact ("ICC"). Dkt. 20. He  
21 states that, shortly after arriving in Washington, he began working at the corrections facility  
22 and that certain amounts were deducted from his earnings including deductions for legal  
23 financial obligations, costs of incarceration, and crime victims' compensation. *Id.* He states  
24 that when his inmate trust account was transferred from Virginia to Washington, he was  
25 informed that \$930.00 of the \$1,695.31 had also been deducted for legal financial  
26 obligations, costs of incarceration, and crime victims' compensation. *Id.* at 4. Townsend  
27 filed a grievance regarding these deductions and it was denied. *Id.* at 4-5. He then filed

1 level two and three grievance appeals which were also denied. *Id.* at 5. Townsend then filed  
2 a tort claim alleging that DOC “officials had violated his due process rights under the  
3 Federal [a]nd State constitutions.” *Id.* Townsend states that the response he received to his  
4 tort claim stated that while he was incarcerated in Washington, he was subject to deductions  
5 under Washington law according to RCW 72.09.015(14). *Id.* at 5-6. Townsend did not file  
6 an action in state court and filed the action in this Court on June 2, 2010. Dkt. 1.

7 According to his complaints, Townsend alleges that under the ICC, he has the rights  
8 of a Virginia inmate while he is incarcerated in Washington and that his judgment and  
9 sentence do not authorize the deductions that are being taken by the Washington DOC  
10 officials. He asserts that this taking is being done without proper authority under state law  
11 and absent proper authority under the ICC. Dkt. 20 at 8. Townsend maintains that this  
12 taking violates his rights to due process and equal protection under the Fourteenth  
13 Amendment to the United States Constitution. *See generally* Dkts. 5 & 20.

### 14 III. DISCUSSION

#### 15 A. Report and Recommendation

16 In the Report and Recommendation, the magistrate judge found that Townsend, both  
17 in his complaint and proposed amended complaint, failed to state a claim for a violation of  
18 the Fourteenth Amendment because: (1) he was given proper notice and an opportunity to be  
19 heard regarding the deductions from his account through the prison grievance system, and  
20 (2) he was given a post-deprivation of property remedy through the state’s Tort Claims Act,  
21 RCW 4.92.010, et seq. Dkt. 25 at 4-5. Therefore, the magistrate judge recommended that  
22 Defendants’ motion to dismiss and Townsend’s motion for partial summary judgment  
23 should be denied as Townsend failed to state a claim as a matter of law under § 1983. *Id.* at  
24 4-5. In addition, the magistrate judge found that allowing Townsend to file his proposed  
25 amended complaint would be futile and thus his motion should be denied as the magistrate  
26 judge assumed the facts alleged in Townsend’s amended complaint in finding that he failed  
27 to state a claim. *Id.* at 5-6; *see Allen v. City of Beverly Hills*, 911 F.2d 367, 374 (9th Cir.

1 1990) (affirming district court's denial of plaintiff's motion to amend complaint when such  
2 amendment "would likely prove futile").

3 **B. Townsend's Procedural Objection**

4 As an initial matter, Townsend makes a procedural objection to the magistrate judge  
5 issuing the Report and Recommendation without first considering Townsend's replies to the  
6 responses to his motions to amend and for partial summary judgment. Dkt. 31. The  
7 magistrate judge issued his Report and Recommendation on December 9, 2010 (Dkt. 25),  
8 and the Court received Townsend's replies on December 14, 2010 (Dkts. 26 & 27). Because  
9 Townsend's replies may have been mailed on time, but were not received before the Report  
10 and Recommendation was issued, the Court designated his replies as objections to the  
11 Report and Recommendation to be considered by this Court in reviewing the Report and  
12 Recommendation. Townsend fails to cite to any authority to show this procedural action  
13 was somehow improper as the Court is considering all objections Townsend has made to the  
14 magistrate judge's findings. Accordingly, the Court concludes that the matter will not be  
15 remanded to the magistrate judge to consider Townsend's replies, but the Court will  
16 consider the arguments made in his replies in reviewing the magistrate judge's Report and  
17 Recommendation.

18 **C. Townsend's Substantive Objections**

19 Townsend's substantive objections to the Report and Recommendation contend that  
20 the magistrate judge did not properly consider his due process claims, did not acknowledge  
21 his equal protection or state law claims, applied the incorrect standard in denying his motion  
22 to amend, and improperly denied his motion to amend as futile. *See* Dkts. 26, 27, 29 & 31.

23 Townsend's procedural due process claims allege that Defendants improperly  
24 deducted funds from his prisoner account without due process of law. Dkts. 5 & 20. An  
25 unauthorized intentional deprivation of property by a state employee or official does not  
26 constitute a due process violation under the Fourteenth Amendment if an adequate post-  
27 deprivation remedy is available under state law. *Hudson v. Palmer*, 468 U.S. 517, 534

(1984). Under Washington law, prisoners may avail themselves of the DOC grievance process and/or file tort claims against the state for the unlawful loss or destruction of their personal property. *See* RCW 72.02.045 (state and/or state officials may be liable for the negligent or intentional loss of inmate property) and RCW 4.92.090 (state liable for the tortious conduct of state officials); *see also Wright v. Riveland*, 219 F.3d 905, 918 (9th Cir. 2000) (holding that the Washington Department of Corrections' grievance process is an adequate post-deprivation remedy for unauthorized deductions from a prisoner's account). In addition, a prisoner does not have a right to a specific grievance procedure, as long as it is adequate, so that a defendant merely ruling against an inmate's grievance does not contribute to the underlying alleged deprivation. *See Gallaher v. Shelton*, 587 F.3d 1063, 1069 (10th Cir. 2009).

Here, Townsend does not dispute that he has availed himself of the prison's grievance procedure as well as had an opportunity to file a tort claim in state court for deprivation of his property. Dkt. 20 at 4-5. In addition, because Townsend does not have a constitutional right to a specific grievance procedure, his allegations against Defendants S. Sinclair, John Doe 2, and D. Thompson alleging due process violations for not overturning the grievance responses of Defendants John Doe 1 and C. Munden, do not establish due process claims under § 1983. Accordingly, the Court concludes that the magistrate judge properly found that Townsend's procedural due process claims should be dismissed as the state provided him with an adequate remedy for the deprivation of his property.

Next, Townsend alleges that, based on the ICC, his due process and equal protection rights were violated when Defendants deducted funds from his prisoner account. Dkt. 20 at 8-9. However, the ICC is not federal law and claims premised upon the ICC do not give rise to a cause of action under § 1983. *Ghana v. Pearce*, 159 F.3d 1206, 1208 (9th Cir. 1998). Further, the Ninth Circuit in *Ghana* specifically held that the ICC does not establish a state-created liberty interest protected by the Fourteenth Amendment. *Id.* at 1209. Therefore, the

1 Court concludes that Townsend's claims for due process and equal protection based on the  
2 ICC should be dismissed with prejudice.

3 In addition, Townsend alleges that his due process and equal protections rights were  
4 violated based on Defendants' alleged violations of state law. Dkt. 20 at 8-9. However,  
5 violations of state law do not give rise to a cause of action under § 1983. *Galen v. County of*  
6 *Los Angeles*, 477 F.3d 652, 662 (9th Cir. 2007). Therefore, the Court concludes that  
7 Townsend's claims for due process and equal protection based on his allegations that  
8 Defendants violated state law should be dismissed with prejudice.

9 Townsend alleges an equal protection claim based on disparate treatment between  
10 himself and a federal inmate. Dkt. 20 at 7. However, in order to bring a claim for equal  
11 protection based on disparate treatment, Townsend must show that others similarly situated  
12 to him were given more favorable treatment and that such treatment was based upon an  
13 impermissible motive on the part of the government. *See U.S. v. Sanchez-Gonzalez*, 176  
14 F.3d 486 (9th Cir. 1999). Townsend cannot show that he is similarly situated to a federal  
15 inmate, as that inmate's transfer to a Washington DOC facility would implicate federal law  
16 and all of the state's actions would be subject to § 1983 whereas Townsend's placement is  
17 not subject to federal law in the same way. Therefore, the Court concludes that Townsend's  
18 equal protection claim based on disparate treatment should be dismissed with prejudice.

19 Townsend alleges claims against Defendants Eldon Vail and John Doe 3 in their  
20 official and individual capacities. Dkt. 20 at 3. However, defendants cannot be held liable  
21 under § 1983 solely on the basis of their supervisory responsibility or position. *Monell v.*  
22 *New York City Dept. of Soc. Servs.*, 436 U.S. 658, 694 (1978). Because Townsend's only  
23 allegations against these Defendants are based on their roles as supervisors, his claims  
24 against them should be dismissed with prejudice.

1 **D. Conclusion**

2 The Court concludes that the magistrate judge correctly found that Defendants'  
3 motion to dismiss should be granted, Townsend's motion for partial summary judgment  
4 should be denied and his motion to amend his complaint should be denied as futile.


5 Therefore, it is hereby **ORDERED** that:

6 (1) The Report and Recommendation is **ADOPTED**;

7 (2) Townsend's motion for partial summary judgment (Dkt. 19) and motion to  
8 amend (Dkt. 20) are **DENIED**;

9 (3) Defendants' motion to dismiss (Dkt. 13) is **GRANTED** and the claims alleged  
10 in Townsend's complaint are **DISMISSED with prejudice** for failure to state a claim.

11 DATED this 14th day of February, 2011.

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14 BENJAMIN H. SETTLE  
15 United States District Judge  
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